

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
v.) **Case No. 05CV0329GKF-PJC**
)
 TYSON FOODS, INC., et al.,)
)
 Defendants.)

**JOINT MOTION FOR LEAVE TO TAKE CERTAIN DEPOSITIONS
BEYOND THE DISCOVERY DEADLINE
AND INTEGRATED BRIEF**

COME NOW, the Plaintiff, State of Oklahoma (“the State”) and the Defendants, and pursuant to Fed. R. Civ. P. 16(b)(4), jointly request leave to take the depositions of Don V. Allen and The Poultry Federation on a date after the discovery deadline in this case [Dkt # 1929]. Specifically, these depositions would be taken on April 30 and May 1, 2009. These extensions are requested to accommodate Mr. Allen and The Poultry Federation’s (“the Federation”) schedules.

On or about March 17, 2009, the State served a subpoena and 30(b)(6) deposition notice on the Federation, setting the deposition for April 14, 2009. (Attached as Exhibit A). On or about March 31, 2009, the Federation, through counsel, filed a Motion to Quash and Motion for Protective Order and a memorandum in support thereof in the United States District Court for the Eastern District of Arkansas. (Attached as Exhibit B). In their Motion, the Federation argued that the timing of the deposition was

burdensome.¹ The State of Arkansas General Assembly is in session during the time proposed for the deposition, and the Federation's business largely involves lobbying efforts on behalf of the poultry industry. In effect, the Federation argued that it would be required to "stop doing its business" to prepare for the deposition. (Correspondence from J. Jones to E. Ward, dated March 30, 2009, attached as Exhibit C). The parties understand the concern of the Poultry Federation, a non-party, and are willing to accommodate its request should the Court deem such agreement appropriate.

Don V. Allen

Mr. Allen is the former president of the Poultry Federation. On or about April 1, 2009, the State served a subpoena and deposition notice on Mr. Allen requiring him to appear for deposition on April 13, 2009. Although Mr. Allen's deposition was noticed in his individual capacity, a large part of his knowledge likely relates to information gained during his employment with the Federation. On or about April 8, 2009, counsel for the Federation informed counsel for the State that it would be representing Mr. Allen and asked for the parties to accommodate their schedule and work to make the depositions of Mr. Allen and the Federation more efficient by scheduling them on two consecutive days. The parties understand the concern of Mr. Allen, a non-party, and his counsel and are willing to accommodate his request should the Court deem such agreement appropriate.

Discussion

Fed. R. Civ. P. 16(b)(4) states that, "a schedule may be modified only for good cause and with the judge's consent." According to the court in *Wilson v. Wal-Mart Stores, Inc.*, "The party seeking to extend a scheduling order deadline must establish

¹ The Federation also objected to the scope of the notice, but the State and the Federation have been able to resolve those objections.

good cause by proving that the deadline could not have been met with diligence.” *Id.*, 2008 WL 2622896, 1 (D. Kan., 2008). Good cause exists in the instant action because the scheduling conflict of non-parties is outside the control of the parties. While the parties understand and appreciate the importance of complying with the Court’s deadlines, this is a situation where doing so would create a burden on non-parties, Mr. Allen and the Federation. Finally, the parties agree that permitting these depositions will not prejudice any party or cause any undue delay in the remainder of trial preparation, nor will this schedule affect any other deadlines in the scheduling order. Therefore, the parties respectfully request that the Court allow the parties to accommodate the requests of two non-parties and extend the discovery deadline to allow the depositions to go forward on April 30 and May 1, 2009.

Respectfully Submitted,

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